

# **Canadian Employer's (Management) Strike Manual**

**2003**

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## INTRODUCTION:

Strikes - both lawful and unlawful - are part of carrying on business. Sooner or later, every management is likely to be faced with one.

It is management's responsibility to put itself in the best possible state of preparedness for a work stoppage and the purpose of this Manual is to help management prepare for and live through a strike.

Some of the specific recommendations herein, will require modification to ensure compliance with applicable laws and regulations, for example, payment of vacation pay to strikers. Nonetheless, they have been included as being indicative of a Company's philosophy regarding management's conduct during a strike and these recommendations should be followed where possible.

There is no such thing as a "friendly" strike. For one reason or another, employees through their union have collectively refused to work thereby jeopardizing management's ability to meet its production, sales and profit objectives. A strike is a form of economic warfare. A strike and behaviour on a picket line are governed by the normal rules of civil conduct. Unfortunately, emotions may run high and righteous indignation by those engaging in the strike may lead them to rationalize civil or even criminal misconduct.

A philosophy of management firmness and predictability during a strike does not detract from the building of long-term good employee relations, - a high priority goal of the Company. Softness and vacillation are almost certain to have the opposite effect. Experience has shown that firmness and predictability also contribute materially to a workable and continuing relationship with union representatives.

Management's judgment in dealing with people problems is always important. During a strike, it can become critical. But it ought always to be exercised within a framework of firmness and predictability.

While much of this Manual is appropriate for inclusion in a Corporate Relations Guidelines Manual, it has been prepared separately so that circulation can be restricted for obvious reasons. We ask that you keep this Manual in your own possession or under your direct control.

## **Part A: LAWFUL STRIKE**

This Part deals with the situation in which a strike takes place as provided for by applicable laws. While much in this Part applies equally in the case of a strike which is in violation of the law and/or a collective agreement, there are some specific items which should be noted in connection with a strike prohibited by law and/or an agreement and these are set forth in Part B.

### **Prestrike Meeting with Union**

When a strike is inevitable, it is desirable to have a prestrike meeting with the union if this is practicable. Sometimes, this is not possible, - for instance, in a case where the decision to strike is made at a meeting on the eve of the strike and employees proceed directly from the meeting to the operation gates to establish a picket line. However, in most cases, such a meeting can be arranged, if not on its own, then at the tail end of the bargaining session at which negotiations finally break down.

The purpose of a prestrike meeting is to tell and to listen, not to negotiate with the union. Bargaining is over and management should avoid appeals for reasonableness and so forth regarding items in dispute in the bargaining.

The meeting should be with the union bargaining committee plus other local union officers who may not have been on the committee but who will have responsibilities concerning conduct of the strike. For management, the senior operating person and the most senior representative available from each department should be present, including a representative from the service groups such as the accounting department. As this is not a bargaining session, the Company's spokesperson in negotiations need not be in attendance but if readily available, could be there as well.

What should the union be told at the prestrike meeting?

- (a) that management expects union representatives and employees to abide by the law in all respects;
- (b) that, in law, the sole purpose of a picket is to communicate information, not to interfere with persons or vehicles;
- (c) that management and not the union or union pickets decides who and what has free access to Company property;

- (d) that management will take all necessary steps against the union and/or individuals to ensure that the law is obeyed fully;
- (e) that, for purposes of information only and in no way to seek permission, management, where practicable, may advise the local union in advance of truck or rail vehicles coming into the Company's property;
- (f) that the Company must receive payment from the union of a specified amount by a specified date each month if certain employee group benefit plans are to remain in force (more below regarding this item).

What should management obtain from the union at the prestrike meeting?

- (a) an undertaking that the law will be complied with and free access will not be interfered with;
- (b) a statement from the union regarding location of pickets off Company property;
- (c) the names of the picket captains and cell telephone numbers so they may be contacted
- (d) a statement of the union's position regarding payment of group benefit plan premiums.

Some discussion is bound to take place at a prestrike meeting. The important thing is that management should not give any undertaking whatsoever, if for no reason other than that subsequent events may require that it cannot be lived up to. For example, no statement should be made that the Company will not operate during the strike. If such a question arises, the response should be that this is a matter for the Company alone to decide. No arrangement should be made for non-bargaining unit employees, salesmen, etc., to show any identification to a picket when entering or leaving Company property. Management decides who has access to the property whether a strike is in progress or not. Employers who have entered into a picket line pass or I.D. arrangement with the union - "to show a spirit of co-operation" - have found to their sorrow that they have damaged their supervisory and staff relations and, at the same time, unwittingly helped to perpetrate the myth that a picket line is not to be crossed without permission of the pickets.

Several other items may arise in the discussion and the position management should take regarding many of them is indicated elsewhere in this Manual.

## **Employee Status During the Strike**

An employee who exercises the lawful right to strike does not thereby cease to be an employee. Nevertheless, there are certain things an employee can do which affect the status as an employee even though on strike.

An employee who is on strike may quit the services of the Company during the strike. On exercising the right to quit an employee should be required to sign an acknowledgement to this effect before the record of employment for Employment Insurance purposes is issued and vacation pay is paid.

An employee who is on strike may also die, become disabled or pass normal retirement date during the strike.

An employee who is on strike may be discharged from employment for cause during the strike. The employee's conduct giving rise to the discharge may be related directly to the strike, ie. in connection with criminal activity on the picket line, sabotage and so on.

The replacement of strikers with new hires - in the event the Company continues to operate or starts up operations is not permitted under BC law. The law varies from jurisdiction to jurisdiction.

Maintaining clear, accurate and up-to-date records on the employment status of all strikers is very important. It is necessary information to have in formulating return to work provisions in the strike settlement agreement with the union, in costing a settlement pay proposal, etc. In the event that decertification proceedings are launched or another union raids, it is important information to have readily available for the government authorities. Here again, in some jurisdictions, it is unclear exactly which individuals are entitled to participate in a vote and this makes accurate records doubly important as they can be used to substantiate the position management may wish to take with respect to certain individuals.

## **Picketing**

Peaceful picketing is permissible during a lawful strike. Before a court will order a reduction in the number of pickets, restrict their number and location or restrain them altogether, some tort or actionable wrong must have occurred such as an intimidation, trespass, nuisance, assault, defamation (slander or libel on placards), interference with contractual rights or watching and besetting (which is also a crime as provided for in the Canadian Criminal Code). An injunction is obtained by

commencing an action for damages in the Court and applying for an injunction order.

An *ex parte* injunction (without notice to the other side) is more difficult to obtain than in the past even though the law in several jurisdictions still provides for the granting of such in a labour dispute. To obtain one, the court must be satisfied that a serious breach of the peace, injury to a person or damage to property has occurred and is likely to continue.

The relief available to a management which is faced with other than a peaceful picket line depends on the laws of the jurisdiction and the circumstances of the case. The Company's Human Resources Department and outside legal counsel are available for advice in this regard. However, the part management plays in collecting evidence in support of an application for an Injunction, a cease and desist order, etc., is vital.

Evidence is a peculiar commodity, - the colder it gets the harder it is to find. Photos cannot be tripped up in cross examination. Photos usually cannot be accused of lying, and they are difficult to contradict - faults to which human witnesses are not immune.

Still and movie cameras with telescopic lens should be available in the operation at all times. Who on the staff can operate them properly? If there is no one now, then someone should be trained.

A tape recorder to preserve relevant radio and television messages from the union or news broadcasts should be ready at hand.

A detailed written diary (avoid loose leaf) of events on the picket line is essential, on at least an hour by hour basis. Names and actions of those appearing on the picket line should be recorded periodically and frequently. Who appears to be giving the orders? What license plates are noted in the area? Who, other than employees, are involved? Ensure that whoever is keeping the diary notes what is observed personally and where informed the name of the informant. Any entries in the diary must be identified as to author.

Picketing should not be permitted on Company property. The Company should not provide a picket "shack" or make heat, power or telephone services available to whatever accommodation the union may utilize.

## **Law Enforcement Agencies**

Management should cultivate, on a continuing basis, good relations with the law enforcement personnel responsible for maintaining law and order in the jurisdiction in which the operation is situated. These people can provide valuable information during normal operations and this relationship can become critical during a strike. As negotiations progress, they should be advised. This advice should be stepped up as last minute bargaining proceeds to a strike deadline. They should know what transpired at the prestrike meeting regarding location of pickets, etc.

While an individual law enforcement officer may be sympathetic to the strikers, most will perform their duty of up-holding law and order, particularly if they have been informed fully by management.

Outside counsel should maintain a good working relationship with the RCMP, provincial police forces and other law enforcement agencies.

## **Security of Property and Equipment**

Fencing, floodlighting, operation patrol procedures, roads inside the perimeter fence, etc., should all be planned in advance. Consider security for cars of employees who continue to work. Consider facilities vulnerable to damage due to lack of power, heat or water. Weather conditions are a factor. Remember that maintaining operations may require employees with specific qualifications i.e. stationary engineers. The restriction on the use of replacements may mean a present member of management must be qualified. What will happen if that person is ill or quits and management is not able to utilize a replacement?

## **Construction Gate**

If construction is going on at the site then it may be possible to insulate the contractors from the picketing by use of a construction gate. The theory here is that only the contractors and their employees use the gate so there is no reason to picket there. The Labour Relations Board is obliged on application to consider and, if it may be practically done, direct that picketing be restricted to access to locations which the employees and the Employer use. The *quid pro quo* here may be that the union in some manner not involving picketing has some right to monitor who goes through the construction gate.

Use of a construction gate should be considered and, if feasible, established long before a strike begins. If it is established and maintained as not for use by Company personnel, the union will recognize the legitimacy of it. For the union the value is that the completion of construction should enhance the viability of the business once the dispute is resolved.

## **Putting the Operation to Bed**

An emergency procedure to shut down all operations with no or minimal damage to the operation and equipment should be available and ready to go at all times. The procedure should presume that no bargaining unit employees will be necessary or available. In other words, supervisors and staff should be able to put the operation to bed themselves. This is the ideal situation, although it is recognized that it is not possible in all operations to avoid using some bargaining unit personnel.

In the case of a lawful strike, it should be possible to carry out an orderly shutdown. However, no bargaining unit employee should be used beyond the strike deadline if such can be avoided. For example, they should not be used merely as a matter of convenience and to take an otherwise very onerous, but not a crushing, load off supervision and staff. Time and again, it has been demonstrated that it is a source of considerable pride and satisfaction to supervisors and staff that they can manage a shutdown on their own. Apart from being a morale builder, it indicates, very early, what side they should be on in the dispute.

## **Relationship with Strikers**

Management will want to communicate with striking employees and their families by mail and otherwise. A good idea is to have two sets of addressed envelopes available at all times. When one set is used, another is prepared immediately.

A striker may wish to enter the operation to collect his personal tools or something out of his locker. He should be accompanied by a security officer from the gate and back again. This point often comes up at the prestrike meeting.

No bargaining unit employee should be employed during the strike to do work elsewhere on behalf of the Company or management. Subject to legal restrictions, supervisors and staff should be pressed into action or an independent contractor retained. Again subject to legal restrictions and where necessary, arrangements can be made to bring qualified staff personnel from other locations in the Company. This has been done with qualified stationary engineers, for example.

Management is doing itself a disservice by arranging for temporary employment of a striker elsewhere, within or without the Company, until the strike is over. In the short run, this may save management a skilled man or two but it helps to prolong the strike and gives a helping hand to organized labour generally. If all strikers could work elsewhere, when and how would a strike ever end? The construction industry has suffered the consequences of this.



The Company welfare benefits for bargaining unit employees on strike should end unless the union pays, in advance, the necessary premiums for the plans. The Company should move to do this effective with the first of the calendar month immediately following commencement of the strike or sooner. It should not be left later than that and could well coincide with the first day of strike. Some management hold the view that continuation of benefits was good positive employee relations and that this outweighed the financial pressure on the union. This thinking has changed, especially since fringe benefit costs have increased so substantially. Employees affected should be advised by letter from management of the status of all plans.

- (a) Sickness and accident weekly indemnity plan should be suspended forthwith, - once a strike begins, there is no longer a weekly income for loss of which the striker-claimant could be indemnified.
- (b) Group life insurance should be cancelled unless the union pays the full premiums.
- (c) Health plan coverages should be cancelled unless the union pays the full premiums. In some jurisdictions, the government-sponsored hospital and medicare plans will continue coverage for strikers without payment of premiums. This leaves a potentially major item for the strike settlement discussions if neither the Company nor the union remitted premiums during the strike and a liability has been accumulated. In any event, management should make it clear that it won't pay and this could appropriately be done at the prestrike meeting.
- (d) Pensions depend very much on the provisions of the plan. Payments are usually based on hours worked. While on strike no hours are worked. Under some Company Hourly Rated Employees Pension Plans strikers may automatically disqualify themselves for benefits for all or part of the year in which the strike occurred by not working the qualifying number of hours during the year.

Vacation pay should not be paid to a striker if this can be avoided unless, at the time the strike started, an employee had been scheduled for a vacation and such vacation period falls during the strike. In this case, vacation pay should be paid at the time the employee would have gone on vacation had the strike not taken place. If the strike continues for an appreciable length of time, management is then in a position to give returning employees, in the strike settlement, the option of considering some strike time as vacation time. Such an approach not only avoids subsidization of the strike but it may give management more control over vacation

absences at a time when management is trying to return to full production. This is particularly important when a strike terminates just prior to the usual summer vacation period.

Strikers in Company-owned dwellings should be billed, each month, for rent due. The same applies to room rates in dormitories. Meals should be put on a cash basis. These points often arise at a prestrike meeting. Annual rent rebates to tenants under government legislation should be delayed as long as the law will allow; however, prior advice to strike tenants that the rebate will be forthcoming is desirable, - before the union makes a demand to the Company for such rebates.

Payment of prestrike wages should be made as soon as possible and in no case later than the regular pay days. There is some merit in paying in the usual way at the usual place, but this may not be practicable. If another location is used (say, "in town"), a staff person should accompany the paymaster, - they may pick up useful information from strikers who come to collect their pay.

If the strike runs over Christmas, consideration should be given as to whether or not to distribute any usual Christmas bonus or gift in the normal way.

A striker or his wife may telephone the office. A log and summary of all calls during the strike should be kept, - particularly those from strikers and their families.

### **Relationship with Supervisors and Staff**

This is extremely important during a strike. High morale and a healthy attitude in supervisors and staff can often shorten the duration of a strike.

Of course, all supervision and staff should be fully aware of the status of negotiations. As a strike deadline draws near, each should also clearly understand the role expected in the event of a work stoppage.

The first thing they should understand is that they will be expected to report for work and, in the absence of a reason satisfactory to the Company for failing to report, they will be considered, in effect, to be on strike and liable for the consequences. Of course, the Company does not expect an individual to subject himself to bodily harm by fighting his way through mass pickets. But, in the absence of such a situation, all supervision and staff should report for work as required. In BC there are limits on management's right in this area.

All of them should be assigned work which will keep them fully occupied. This is an opportunity to try them out on work which they do not regularly perform. The regular security force should be augmented with some staff, for example.

Some companies have found that during a strike is an excellent time to carry out a supervisory and staff training program. It is also a good time to carry out staff medical examinations.

Overtime hours worked should be recorded, - this often helps in determining what, if any, lump sum cash payment should be made to supervisors and staff when the strike is over.

Planning by management should see to it that salary levels for supervisors and staff are taken care of well in advance of the commencement of bargaining, thus avoiding the necessity of making salary adjustments, in all but exceptional cases, during a strike. The Company's salary administration program may anticipate this, however, management should not ignore this important aspect.

The picket line can show signs of a "Roman Holiday" the first day or two and access to the operation may be difficult if not impossible. Management should be careful not to over-react to a situation which will soon become orderly. If mass picketing or other unruly behaviour does not die down itself, legal steps will be required to restrain it and this takes time. For this reason, it may be appropriate to have an adequate skeleton staff stay in the operation over the strike deadline. Food and other supplies sufficient for a short stay should also be available inside the fence. Some may consider this unnecessarily provocative and with some reason. However, the necessity to safeguard Company property and equipment outweighs this consideration. Mass picketing appears to be a thing of the past in most situations but no one knows what might happen. Union control (if it existed) and police control can break down quickly. There are considerable examples of this today even apart from labour disputes.

All key senior members of management should not be inside together over the strike deadline. Some should be outside. A couple of those outside will be expected to test the picket line and work on steps to establish free access.

A procedure should be developed whereby threatening phone calls to management homes and other incidents of intimidation can be promptly reported and followed up.

On occasion, the car or house, etc., of a supervisor or a staff member will be damaged by a troublemaker. Management should undertake immediately to pay

for the damage in full. An announcement of a reward for the apprehension and conviction of the person or persons responsible should also be considered.

Subject to restrictions on replacements, University students should be encouraged to stay with or join the Company just as if normal operations were being carried out. The experience they receive will be difficult to otherwise duplicate.

It is the Company practice to avoid staff lay-offs during a strike if this can possibly be avoided, regardless of the length of the strike. Treatment of staff during a strike has a direct bearing on morale and whether they will organize into a union of their own. Supervisors and staff should be kept fully informed on the strike situation and any moves to terminate it. Great care must be taken regarding what top management says in staff meetings or in written communications. This information will surely reach the ears or eyes of union representatives. By the same token, this is a good vehicle for passing on to strikers and the union, indirectly, what management wants them to hear.

### **Relations with Customers, Suppliers and Others**

Management will want to keep customers, suppliers, the mayor, etc., fully informed. Written communications are good for this. Care must be used with telephone calls, there are still some people who believe they can curry favour with union representatives by passing on information to them.

Suppliers may be required to choose up sides in a strike. Management should not hesitate to be firm with a supplier who would like to avoid involvement in the dispute. By such conduct, a supplier is siding with the union whether he realizes it or not. Management's memory should not be short. The same goes for a contractor who may be supplying the Company with a service when the strike starts.

Management should recognize that some suppliers of goods and services will not be able to continue to supply during a strike. Identifying these and organizing an alternative or increasing an accessible inventory in advance of a strike may prove invaluable. While management usually keep such arrangements confidential, the fact is that in some cases the knowledge that the Employer is making such preparations or has such alternatives may cause the employees to reconsider the Employer's ability to withstand a strike.

### **Relations with other Unions/Construction Gates**

It may be that employees of a contractor working on a construction project are represented by another union. As discussed above, establishment of a construction

gate prior to a strike may be critical. As the strike deadline approaches, the contractor and appropriate union representatives should be advised that management expects these employees and the union to comply fully with the terms of their agreement just as management will.

### **Communications with Media**

From time to time, Company statements will be required for release to the media. Only one management representative or someone designated by him should talk to reporters. Management is encouraged to enlist the aid of outside counsel in this respect and in connection with employee letters, staff bulletins, customer letters, etc.

### **Part B: STRIKE IN VIOLATION OF LAW AND/OR COLLECTIVE AGREEMENT**

As already noted, several of the points mentioned above apply equally when management is faced with a strike which is in violation of the law and/or the provisions of a collective agreement. However, there are other points which should be borne in mind, some of which are critical.

A strike during the life of a collective agreement is in breach of the collective agreement and the law. These strikes are unlawful and should be labelled as such.

While some loosely refer to a work stoppage during the life of a collective agreement as a "wildcat", it is better to designate it correctly as "unlawful" or "illegal". Admittedly the word "wildcat" is widely used to describe reckless or rash undertakings. The word took on its colloquial meaning in the U.S. in the 1830's when "wildcat" prosperity was accompanied by a rapid rise in the cost of living and some banks in the Western U.S. issued notes with little or no capital. They were called "wildcat" banks. Thereafter the word was naturally extended to unsound, risky or illicit business enterprises. Some union leaders habitually refer to an unlawful strike as a "wildcat". This is by design. They are attempting to create the impression that they knew nothing of it and had nothing to do with it, and thus they attempt to avoid legal and moral responsibility for it. In some cases, union leaders may be justified in taking this position, but this does not detract from the fact that the work stoppage in most jurisdictions violates the law.

Unlike in the strike situation considered in Part A, an in-term strike happens quickly and often at night, - management has short prior notice of it, if any at all. Decisions have to be made quickly and surely. The time to prepare is now and not when it happens.

## **Notification to Union**

The union should be immediately notified by telephone and letter or facsimile that the work stoppage has occurred, that it is in violation of the agreement (and the law), the action the Company expects the union to take to end it and that the union will be held responsible for all damages resulting from it. Human Resources should keep an up-to-date list of addresses and telephone numbers of local and national offices of the unions with which the Company has relations, including home addresses and telephone numbers of key union officials. Each location should have its own appropriate list. Usual practice is to send the letter to the union district director with copies to the local international union representation and the president of the local union. Union officials must act decisively and expeditiously to end the work stoppage if they hope to absolve the union of liability or to minimize it. Union officials should be put on the spot early and forced to take a clear cut stand on the strike including the upholding of law and order.

## **Union Request for a Meeting**

One of the very first decisions management will probably have to make when faced with an in-term strike is a request from union officials for a meeting to discuss and settle the situation. The answer to this request can be decided well in advance of the strike - management will meet the union after all the employees have returned to work and not before. This is a difficult position to take, particularly if the union appeals to the Labour Relations Board and pressure is brought to bear from that quarter. Management should welcome a meeting with Labour Relations Board officials in order to lay the facts before them, especially if there is mass picketing, other intimidation, etc., but the meeting should not be held with union officials present.

## **Do Not Waive Right to Discipline**

Inevitably, the union's position will include a demand that management waive its right to discipline employees for their participation in the strike. If management is firm, this may well be the only real demand because the point the union and/or the employees really wanted to make has been driven home by the fact of the strike itself. Management has lost all if it waives the right to discipline. What has been allowed to happen is certain to recur.

If the strike is of short duration, management will probably not have had sufficient time to thoroughly investigate the causes and the part played by individual employees before a return to work. It may be that all employees will have to be allowed to return to work while management sorts out the whole thing and, if this

is the case, it is wise to give each employee (perhaps by placing it on the time card) a notice to the effect that a Company investigation into the strike is continuing and that by allowing a return to work, management is not waiving any right to discipline later if the investigation shows that such is warranted.

## **Discipline**

An employee does not cease to be an employee simply because he takes part in a strike which violates an agreement or the law. Management has to act to discipline or discharge for such conduct, - it is not automatic.

It is well established that management is properly within its rights to discipline employees for participating in an unlawful strike or a strike in violation of an agreement. The severity of the penalty depends on the facts of the case, the employee's record and on the language of the agreement. If the union can convince an arbitrator that the strike was provoked by management, he may well reduce or wipe out the discipline imposed. All employees who participate in the strike need not receive the same discipline. Arbitrators have rejected the principle that union stewards and officers, because of their special position, can properly be disciplined more severely than the rank and file. The level of severity should be the same for the employees in like circumstances. The Employer must be prepared to justify varying levels of discipline.

In some of these strikes, discharge is justified at least as regards some employees who have taken an especially active role and can be made to stick in an arbitration. The degree of culpability has a real bearing here.

It is management's responsibility to identify the ring leaders and to see that they receive appropriate discipline. It is usually unfair to discipline all employees concerned equally if there were varying degrees to wrongdoing. If the decision is to discipline all employees with suspensions, the actual days on which the suspensions are imposed, can be spread out to meet the requirements of efficient operations. This is the more practical answer to those who are of the view that the Company cannot do much, if anything, if all employees involve themselves in the strike.

## **Liability of Union**

In B.C. a union can be sued in its own name for damages if the Labour Relations Board has declared the strike unlawful. In other cases, a simpler way to make a claim for damages is by way of a Company grievance against the union filed under the collective agreement grievance and arbitration procedure. Time limits and all other requirements in the grievance procedure should be complied with strictly.

## **Picketing**

Because of the nature of this kind of strike, it is likely that mass picketing will take place. A restraining order or a cease and desist order will likely be granted by the Labour Relations Board prohibiting all picketing. Collection of evidence as mentioned in Part A is vital here.

A “strike” in the above context contemplates a complete withdrawal of employee services. Of course, there is other conduct which also constitutes a strike within the meaning of the law and a collective agreement. A concerted refusal to work overtime (agreement language is important), sit-in, slow down, etc., are examples. It should be dealt with by management with the same degree of firmness and predictability as in the case of complete withdrawal of services. Management may discipline individuals and also seek a cease and desist order from the Labour Relations Board and pursue the union for damages.

## **CONCLUSION**

The purpose of this Manual is to help management prepare for a work stoppage. Time spent in advance pays off because when the work stoppage occurs things often happen quickly and there is little time to carefully consider before a response or action is required. Obviously each operation or business will have its individual issues and concerns. Thinking about these in advance and preparing can make the difference in avoiding, successfully resisting and reducing the length and impact of a strike.

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